S.B. Civil First Appeal No.168/1990

Jagdish Rai. vs. Aidan and others.

Date : 2.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Rajendra Mehta, for the appellant.
Mr. NS Acharya, for the respondents.
Mr. Pankaj Sharma, for the applicants.

- - - - -

Heard learned counsel for the parties on application filed by the applicants under Order 1 Rule 10 CPC

It appears from the facts of the case that a suit for specific performance of contract was filed by the plaintiff/appellant Jagdish Rai against the defendants Aidan, Magan Lal, Moti Lal, Brij Ratan and Harsh Kumar and the suit was dismissed by the trial court vide judgment and decree dated 12.11.1990. Against which this appeal is pending before this Court preferred by the plaintiff.

Six applicants are claiming that they have share in the property in dispute which is subject matter in the suit and appeal. According to the applicants, even some other persons have share in this property and they are also not agreeing for sale of their share in this property. Therefore, according to the applicants, they may be impleaded as party in the present appeal.

According to learned counsel for the appellant and

respondents, the applicants cannot be impleaded as party in the proceedings arising out in a suit for specific performance of contract because of the simple reason that in a suit for specific performance of contract, even the persons who are claiming themselves to be true owners of the property are neither necessary nor property party nor can be impleaded.

Here in this case, according to the learned counsels for appellant and respondents, the plaintiff is seeking only enforcement of the agreement for which he filed the suit for specific performance of the contract and now the matter has been settled between them and, therefore, the appeal is required to be decided in accordance with the compromise between the parties.

It is settled law that in a suit for specific performance of contract, the persons who are not party to the agreement and may be claiming their share in the property in dispute or may be claiming themselves to be owner of the property, they cannot be impleaded as party. It is also settled law that the purchaser will get the property which seller possesses and can alienate.

In view of the above, since by passing of any decree in this appeal, the rights of the applicants are not affected in any manner and since they are neither necessary nor even proper party, therefore, the application for being impleaded as party is dismissed.

Heard learned counsel for the appellant and respondents.

The suit for specific performance of contract was filed by the plaintiff/appellant and that was dismissed by the trial court vide judgment and decree dated 12.11.1990, against which, the present appeal was filed. The appeal was admitted on 9.4.1992. During the pendency of the appeal, the respondent no.1 Aidan expired. His one of the son Moti Lal is already party in the appeal. However, the compromise which has been filed before this Court on 8.7.2005 and verified by the Deputy Registrar (Judicial), Rajasthan High Court, Jodhpur, another son of Aidan namely, Shanker Lal also put his signatures on the compromise.

Now both the parties pray that since the matter has been settled between both the parties, though on some changed conditions, therefore, a compromise decree may be passed.

The compromise in writing has been filed before this Court on 8.7.2005 and verified by the Deputy Registrar (Judicial), Rajasthan High Court, Jodhpur, therefore, the appeal deserves to be allowed, hence, allowed and the judgment and decree dated 12.11.1990 is set aside and following decree is passed :-

“Decree for specific performance of agreement for sale dated 13.4.1977 and 10.8.1979 is passed in favour of the plaintiff/appellant (Party No.1 in compromise). The entire

consideration of Rs.29 lakhs has been paid by the Party No.1 to Party No.2 and one Chagan Lal and they acknowledge the receipt of the above amount which according to both the parties is the entire sale consideration as per the present market value of the property. The property is described herein below :-

Chak No.	P.A. No.	Killa No.
13 FTP	184/255	11 Ta 14 – 17 Ta 24 4.00 8.00
19 NGCB	184/256	1, 2, 3 & 10 4.00
14 FTP	183/255	16 & 25 2.00
24 NGC	183/256	4 Ta 7 4.00
12 FTPB	187/250	11, 19 & 20 3.00
12 FTPB	187/251	3 Ta 9 - 13, 14 & 17 7.00 3.00
12 FTPB	186/250	7, 8 & 13 3.00
12 FTPB	187/250	17 & 18 - 22 Ta 25 2.00 4.00
12 FTPB	187/251	2 1
		TOTAL 45.00 Bighas

Party No.2 and Chagan Lal, who though was not party in the agreement for sale in question but said Chagan Lal only entered into compromise and admitted execution of the agreement and also signed agreement which was filed before Deputy Registrar (Judicial), are directed to execute the sale deed in favour of the party no.1 – plaintiff or any other person named by the party no.1 for the land described above within a period of two months from the date of decree.

In case party no.2 and Chagan Lal fail to execute the sale deed, the party no.1 shall be entitled to execute the sale deed in accordance with law and in terms of the compromise decree.

A sum of Rs.3,24,000/- has been deposited by the Party No.1 in the trial court as per the directions of this Court in this appeal. The party no.1 shall be entitled to receive back the said amount from the trial court and the party no.2 and Chagan Lal shall not have any objection against that.

Since both the party no.1 and party no.2 have admitted possession of the party no.1, therefore, party no.2 and Chagan Lal are restrained from interfering with the possession of the party no.1.

The stamp duty and registration charges will be payable by the party no.1.

Chagan Lal, who has signed the compromise before this Court and agreed to sell the property in question along with party no.2, therefore, will sign the document as one of the vendors.

In view of the above, both the parties shall bear expenses, hence, no order as to costs.

(PRAKASH TATIA), J.

S.Phophaliya